

**Tax Type:** Motor Fuel Use Tax  
**Issue:** Failure To Have Motor Fuel Use Tax Decal/Permit

THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	
	)	<b>Docket No. 01-ST-0000</b>
<b>v.</b>	)	<b>Acct # 00-00000</b>
	)	<b>NTL # 00-00000000</b>
<b>JOHN DOE</b>	)	
	)	
<b>Taxpayer</b>	)	

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FINDINGS OF FACT:

1. On October 22, 2000, the taxpayer was operating a 1998 Chevy truck pulling a 1997 Kiel trailer in Illinois without a valid motor fuel use tax license. (Stip. #1).

2. The 1998 Chevy truck and 1997 Kiel trailer have a combined registered gross vehicle weight of more than 26,000 pounds. The actual gross vehicle weight of the vehicles in question is less than 26,000 pounds. (Stip. #4, 9)

3. On March 30, 2001, the Department issued an NTL to the taxpayer for motor fuel use tax showing a penalty due of \$1,000 for failure to have a valid license while operating the vehicle on October 22, 2000. (Stip. #2; Ex. #2).

CONCLUSIONS OF LAW:

The NTL issued by the Department alleges that the taxpayer was found operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license pursuant to section 13a.4 of the Motor Fuel Tax Act (Act) (35 ILCS 505/1 *et seq.*), which provides in part as follows:

"Except as provided in Section 13a.5 of this Act, no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction." (35 ILCS 505/13a.4).

Section 13a.5 provides an exception for motor carriers holding a single trip permit. (35 ILCS 505/13a.5). A "motor carrier" is defined as any person who operates a commercial motor vehicle in Illinois. (35 ILCS 505/1.17). The Act defines "commercial motor vehicle" as follows:

"[A] motor vehicle used, designed or maintained for the transportation of persons or property and either having 2 axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds \*\*\*, or having 3 or more axles regardless of weight, or that is used in combination, when the weight of the combination exceeds 26,000 pounds \*\*\*, except for motor vehicles operated by this State or the United States, recreational

vehicles, school buses, and commercial motor vehicles operated solely within this State for which all motor fuel is purchased within this State. \*\*\*" (35 ILCS 505/1.16).

Section 13a.4 of the Act also provides that the motor fuel use tax license shall be carried in the cab of each vehicle. (35 ILCS 505/13a.4). Section 13a.6 of the Act states that if a commercial motor vehicle is found operating in Illinois without registering and securing a valid motor fuel use tax license, then the person required to obtain a license or permit under Section 13a.4 or 13a.5 of the Act must pay a minimum of \$1,000 as a penalty. (35 ILCS 505/13a.6(b)).

Section 21 of the Act incorporates by reference section 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department's determination of the amount of tax owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 505/21; 120/5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the assessment is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill.App.3d 1036, 1039 (2nd Dist. 1978).

In this case, the taxpayer was operating a truck and trailer without a valid motor fuel tax license. He operates the vehicles to transport wood produced by Battern Hardwood, Inc., which is located in Iowa, and he contends that he had no knowledge that he was required to have or display a permit, license, or decal. He contends that he believed that vehicles with less than 26,000 pounds **actual** gross vehicle weight did not need to have or display a permit, license, or decal, regardless of **registered** gross vehicle weight. Finally, he claims that he believed that the requirement for a motor fuel permit, license or decal only applied to diesel powered vehicles, and the vehicles in question are gas powered. He claims that after he was stopped on October 22, 2000, he contacted the Department for guidance concerning motor fuel licenses, and he did not receive the

information that he sought. Since October 22, 2000, however, the taxpayer has obtained the necessary license and decals.

Unfortunately for the taxpayer, the reasons that he has provided for the failure to have a motor fuel tax license are not sufficient under the Motor Fuel Tax Act to warrant a dismissal of the NTL. The taxpayer operated a vehicle that has 2 axles and a registered gross vehicle weight that is greater than 26,000 pounds. Under the Act, the taxpayer is required to have the license. The fact that the vehicle had an actual gross vehicle weight of less than 26,000 pounds, and the fact that the vehicle is gas powered rather than diesel powered are not reasons under the Act to avoid the penalty. Although the taxpayer may have been unaware of the requirement and corrected the error as soon as possible, the fact remains that he was in violation of the law on the day in question.

It is therefore recommended that the Notice of Tax Liability be upheld.

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Linda Olivero  
Administrative Law Judge

Enter: November 16, 2001